



Comptroller General
of the United States

Washington, D.C. 20548

Isrin

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Decision

Matter of: Rhimco Industries, Inc.

File: B-247600

Date: June 8, 1992

Dan J. Massey for the protester,
Hugh J. Hurwitz, Esq., Federal Bureau of Prisons, Department
of Justice, for the agency,
Jeanne W. Isrin, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest against solicitation cancellation for unreasonable prices is dismissed where protester's bid was nonresponsive to the required delivery schedule, and hence protester is not an interested party to pursue protest.

DECISION

Rhimco Industries, Inc. protests the cancellation of invitation for bids (IFB) No. 229PI-0019-91, issued by UNICOR, Federal Prison Industries, Inc., for 600,000 type RM828 battery cells. We dismiss the protest.

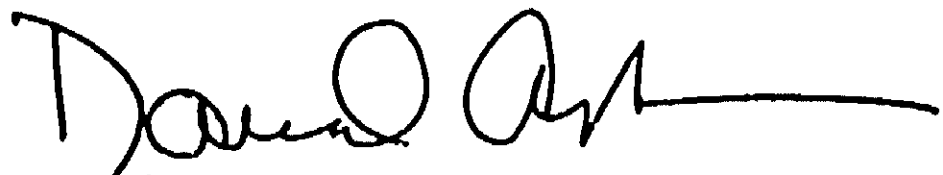
The procurement was conducted in anticipation of an order from the U.S. Army Communication Electronics Command for 60,000 BA1568 batteries, each of which is constructed of 10 RM828 battery cells. Two bids were received in response to the solicitation. Because Rhimco's low bid (\$630,000) was 46 percent higher than the government estimate (\$432,000), the contracting officer determined that all prices obtained were unreasonably high and canceled the solicitation pursuant to Federal Acquisition Regulation (FAR) § 14.404-1(c)(6). Upon learning of the cancellation, Rhimco filed this protest with our Office. Rhimco claims that its price was fair and reasonable, and that the cancellation was therefore unjustified.

As a preliminary matter, UNICOR argues that Rhimco lacks the requisite interest to protest the cancellation, since Rhimco's bid was nonresponsive to the required delivery schedule. We agree. While the solicitation required delivery of all items within 120 days after award, Rhimco's offered delivery schedule provided for delivery of only approximately 300,000, one-half of the requirement, within

the required 120-day period; delivery of all items would not be completed for another 3 months. Therefore, Rhimco's bid was nonresponsive pursuant to FAR § 14.404-2(c), making Rhimco ineligible for award. Under our Bid Protest Regulations, however, only an interested party may file a protest. 4 C.F.R. § 21.2(a) (1992). That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. As Rhimco was ineligible for award under the solicitation, it lacks the requisite interest to protest the cancellation, and its protest therefore is dismissed.

In any case, we note that an IFB may be canceled after bid opening if the prices of all otherwise acceptable bids are unreasonable. FAR § 14.404-1(c)(6); Cottrell Eng'g Corp., B-242973, May 21, 1991, 91-1 CPD ¶ 498. Here, Rhimco's low bid (\$1.05 per cell) was approximately 46 percent higher than the government estimate (\$.72 per cell), which was based on a quotation (\$.72 per cell) from its Duracell, Inc., a battery manufacturer. We have found cancellation to be justified where the low responsive bid exceeded the government estimate by as little as 7.2 percent, see Building Maintenance Specialists, Inc., B-186441, Sept. 10, 1976, 76-2 CPD ¶ 233, and we have found quotes from principal manufacturers of the required item to be a valid basis for the government estimate against which to determine price reasonableness. See Adrian Supply Co., B-240871; B-240872, Dec. 21, 1990, 90-2 CPD ¶ 515. (The validity of the estimate was further evidenced by a post-cancellation Duracell sale of 32,500 RM828 battery cells to UNICOR at the same unit price upon which the estimate was based.)

The protest is dismissed.



David Ashen
Acting Assistant General Counsel